

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**NORTEK MEDICAL STAFFING, INC.**  
*Plaintiff,*

**V.**

**JELICO REGIONAL HOSPITAL, LLC,  
MISSION HEALTH PARTNERS, LLC  
MISSION RURAL PARTNERS, LLC  
PROGRESSIVE HEALTHCARE  
SOLUTIONS, LLC  
*Defendants.***



**CIVIL ACTION NO. 4:24-CV-03354**

**DEFENDANT'S OPPOSED MOTION FOR LEAVE TO FILE  
CROSS-CLAIM AGAINST PROGRESSIVE HEALTH GROUP, LLC AND  
THIRD-PARTY COMPLAINT AGAINST PROGRESSIVE HEALTH OF JELICO, LLC  
AND ROBERT QUENTIN WHITWELL**

TO THE HONORABLE JUDGE DAVID HITTNER:

COMES NOW, Defendant, Jellico Regional Hospital, LLC (“JRH”) and brings this  
Opposed Motion for Leave to File its combined Cross-Claim against Progressive Health Group,  
LLC and Third-Party Complaint against Progressive Health of Jellico, LLC and Robert Quentin  
Whitwell and would show the court as follows:

## **I. RELIEF SOUGHT**

1. Plaintiff sued Defendant for breach of contract and fraud on unpaid invoices. Defendant answered on September 3, 2024, that it was not the responsible party for those invoices [Dkt #1-4] and then removed the matter to federal court on September 9, 2024. [Dkt #1.] Plaintiff then brought an Amended Complaint adding Progressive Health Group, LLC (“PHG”) as a Defendant and alleging breach of contract and fraud on November 27, 2024. [Dkt #7.] PHG did

not file its responsive pleading, a Motion to Dismiss, until March 6, 2025. [Dkt #19.] Defendant filed a Motion to Transfer Venue on March 25, 2025, which is still pending. [Dkt #21.]

2. The Court's deadline for joinder of new parties was January 10, 2025. JRH brings this Motion for Leave after the Joinder Deadline because at that time Progressive was not yet a party and because of new information developed with PHG's Motion to Dismiss. Also, Nortek recently filed on April 7, 2025, its Motion for Leave to File a Second Amended Complaint asserting fraud against PHG as well. [Dkt # 24.]

3. However, because of the possibility that this matter may not be transferred and the consolidated with the lawsuits currently pending in the Eastern District of Tennessee, Defendant needs to bring its own Cross-Claim against PHG under Rule 13(g) and to add as necessary parties, Progressive Health of Jellico, LLC ("PHJ") and Robert Quentin Whitwell ("Whitwell") pursuant to Federal Rule of Civil Procedure 14(a)(1).

4. Defendant JRH has numerous causes of action against PHG and PHJ arising from breach of representations and performance of contracts they made concerning the sale of assets and transfer of operations at the Jellico Regional Hospital in Jellico, Tennessee, including Nortek's contract made the basis of this suit.

5. Although JRH initially entered into an Asset Purchase Agreement ("APA") with PHG, PHG contends that it assigned its obligations to PHJ. As it turned out, PHJ was a newly formed company which had no means of fulfilling the obligations it purportedly assumed and was effectively insolvent. PHG contends that there was a novation of the APA to substitute PHJ in its place, and so PHG should have no liability. PHG contends this despite the APA's provision that PHG remains liable even if there is an assignment, and the lack of a written modification to the APA executed by all the parties, among other things.

6. Further, the sole Member of both PHG and PHJ is Whitwell. Whitwell is the alter ego of both PHG and PHJ and neither company is adhering to the laws governing limited liability companies, such that the corporate veil should be pierced, and Whitwell should be liable in his individual capacity.

7. Further, PHG, PHJ, and Whitwell had actual knowledge of the falsity of some of the representations which were made to induce JRH into entering into these agreements which they did not intend to perform and to induce JRH into finalizing these agreements, namely, by representing that the buyer's obligations had already been performed by the date of closing, when in truth, they had not. Accordingly, JRH has causes of action against PHG, PHJ, and Whitwell for common law fraud, statutory fraud, fraud in the inducement, and promissory estoppel.

8. As a result of the Progressive parties' conduct, JRH has exposure for damages in excess of \$9 million, including default on a lease with the City of Jellico, default on a loan with Pathways Lending for \$1.5 million, and numerous other vendor contracts.

9. JRH brings this motion not for the purpose of delay, but so that justice may be done.

Respectfully submitted,

**PHELPS DUNBAR LLP**

BY: /s/ Peri H. Alkas

Peri H. Alkas; SBN 00783536  
Nicole M. Hilburn; SBN 24055663  
ONE SHELL PLAZA  
910 Louisiana Street, Suite 4300  
Houston, Texas 77002  
Telephone: 713-626-1386  
Telecopier: 713-626-1388  
Email: [peri.alkas@phelps.com](mailto:peri.alkas@phelps.com)  
[nicole.hilburn@phelps.com](mailto:nicole.hilburn@phelps.com)

**ATTORNEYS FOR DEFENDANT,  
JELICO REGIONAL HOSPITAL, LLC**

**CERTIFICATE OF CONFERENCE**

I certify that we have conferred with counsel for the Plaintiff, Elizabeth Bruman, and she is unopposed to the relief sought in this motion.

/s/ Peri H. Alkas

Peri H. Alkas

I certify that we have conferred with counsel for Progressive Health Group, Adam Russ, and he is opposed to the relief sought in this motion.

/s/ Peri H. Alkas

Peri H. Alkas

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been served upon all known counsel of record on May 8, 2025.

Elizabeth M. Bruman  
8128 Spring Cypress Road  
Spring, Texas 77379  
*Counsel for Nortek*

VIA E-MAIL  
[ebruman@brumanlaw.com](mailto:ebruman@brumanlaw.com)

Gerald Waltman, III  
Adam Russ  
GORDON, ARATA, MONTGOMERY,  
BARNETT, MCCOLLUM, DUPLANTIS &  
EAGAN, LLC  
201 Saint Charles Ave., 40th Floor  
New Orleans, LA 70170-4000  
~and~  
1001 Fannin, Suite 3850  
Houston, TX 77002  
*Counsel for Progressive Health Group,  
LLC*

VIA E-MAIL:  
[gwaltman@gamb.com](mailto:gwaltman@gamb.com)  
[aruss@gamb.com](mailto:aruss@gamb.com)

/s/ Peri H. Alkas

Peri H. Alkas / Nicole M. Hilburn